

NO. 46926-0-II

IN THE COURT OF APPEALS OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

Respondent,

vs.

URIEL L. GARCIA,

Appellant.

BRIEF OF RESPONDENT

MICHAEL E. HAAS
Jefferson County Prosecuting Attorney
Attorney for Respondent
P.O. Box 1220
Port Townsend, WA 98368
(360) 385-9180

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A. ASSIGNMENTS OF ERROR

ISSUE STATEMENT

Whether the Superior Court properly exercised its discretion in determining Mr. Garcia reached an express agreement with the State to pay restitution on the amended charge of delivery of cocaine and therefore properly ordered Mr. Garcia to pay restitution for funeral and counseling costs incurred by Mr. Froslic's family?

B. STATEMENT OF THE CASE

1. FACTS

On February 11, 2008, Christopher Chivers went to his friend Brian Froslic's home to check on Mr. Froslic. CP Supp. No. 2. There he found the body of Brian Froslic seated on the floor and slumped over a coffee table. *Id.* Mr. Froslic's large DVD collection was missing and several small bindles of cocaine powder were located in his vehicle. *Id.*

Forensics determined acute alcohol and oxycodone intoxication caused Mr. Froslic's death, with an enlarged heart being a significant contributing factor. *Id.* An investigating officer learned that the absence of cocaine metabolite in Mr. Froslic's body was not surprising as the body can continue to metabolize cocaine after death. *Id.*

The ensuing investigation into Mr. Froslic's death lead law enforcement to believe Appellant Uriel Garcia delivered oxycodone and cocaine to Mr. Froslic which resulted in Mr. Froslic's death. *Id.*

2. PROCEDURAL HISTORY

The State charged Mr. Garcia with Controlled Substances Homicide, a violation of RCW 69.50.415, on October 9, 2013. CP 1. On December 23, 2013, the deputy prosecutor assigned to the case drafted a plea negotiation letter that provided in pertinent part:

In consideration for your client pleading guilty to [the amended charge of] delivery of a controlled substance the State will make the following agreed recommendation: ... *Legal financial obligations that include any restitution.* [Emphasis added]. CP 43.

On January 24, 2014, Mr. Garcia plead guilty to the amended charge of Unlawful Delivery of a Controlled Substance to wit: Cocaine. CP 29. The guilty plea form notes on the section related to the prosecutor's recommendation: "Restitution TBD." *Id.* Significantly, counsel for Mr. Garcia filled out the guilty plea form with the handwritten notation about restitution. VRP 5.

On January 31, 2014, the Superior Court entered its Judgment and Sentence. CP 33. The Judgment and Sentence scheduled a restitution hearing for a subsequent date. *Id.* After several continuances, on October 3, 2014, the Court heard argument about whether the Court had authority to order restitution based on the amended charge of Delivery of a Controlled Substance pursuant to the plea agreement. VRP 1 – 12. The State agrees that in a "typical" drug delivery case restitution would not be ordered. In this case however, the facts were far different from ordinary.

At hearing the defense argued the Court lacked authority to order restitution for the crime Mr. Garcia plead guilty to absent an express agreement to pay restitution. VRP 2 – 9.

The Court found an express agreement existed between Mr. Garcia and the State where Mr. Garcia would pay restitution on the delivery charge. The Court then ordered Mr. Garcia to pay restitution to the family of Mr. Froslic for funeral and counseling costs. CP 49. In reaching its decision the Court stated:

I agree with Mr. Ashcraft [the deputy prosecutor]. I can't imagine a simple delivery of cocaine charge involving restitution. And, ... then we have the Guilty Plea form where in the defense counsel's handwriting restitution is part of the Offer and it's to be determined. To be determined means the amount. It doesn't mean whether there is any or not, in my opinion. And, ... then we have the Sentencing document that says, yeah, restitution is ordered and a restitution hearing was set.

So, to me it's a lot more than just simply implied. I mean, he accepted a Plea Offer and pled guilty to this reduced charge and restitution was a key element of that. I mean, to me it's an expressed agreement. To me there's enough that there's an expressed agreement.

Like I said, could it have been done better and more explicitly? Yes. Maybe. And will it maybe be done differently in some cases in the future? Perhaps. ... [B]ut in this case, I believe it's express enough. And, ... so one, I'm going to order that restitution is permitted. And, two, the types of restitution here requested, counseling for the mother of the victim, ... alleged victim Mr. Froslic, and funeral expenses, would, those would be permitted items. VRP 10 – 11.

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BRIEF OF RESPONDENT

State of Washington v. Uriel L. Garcia, 46926-0-II

C. SUMMARY OF ARGUMENT

The Superior Court properly exercised its discretion in determining Mr. Garcia reached an express agreement with the State to pay restitution on the amended charge of delivery of cocaine and therefore properly ordered Mr. Garcia to pay restitution for funeral and counseling costs incurred by Mr. Froslic's family.

D. ARGUMENT

The Trial Court Properly Exercised its Discretion when it Granted Restitution for Funeral and Counseling Costs for Brian Froslic's Family.

The authority to impose restitution is statutory. *State v. Tobin*, 161 Wn.2d 517, 523 (2007). Customarily, the court imposes restitution if "the offender is convicted of an offense which results in injury to any person or damage to or loss of property." RCW 9A.753 (5). In the alternative, the court may impose restitution "if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement." *Id.* The court is endowed with "broad powers of restitution"¹ to make defendants "face the consequences of his or her criminal conduct." *Tobin*, at 524. Along these lines, courts "do not engage in

¹ *State v. Davison*, 116 Wn. 2d 917,920 (1991).

overly technical construction that would permit the defendant to escape from just punishment.” *Tobin*, at 523-24. A trial court’s restitution order will be upheld unless there was an abuse of discretion. *Davison*, 116 Wn. 2d at 919. Discretion is abused as to restitution matters “only when exercised in a manifestly unreasonable manner or on untenable grounds.” *State v. Dauenhauer*, 103 Wn. App. 373, 377-78 (2000) (citations omitted).

(A) The State does not concede that the crime of conviction did not cause Mr. Froslic’s death.

Under RCW 9.94A.753(5), a trial court may impose restitution on an offender if “the offender is convicted of an offense which results in injury to any person or damage to or loss of property.” The prosecutor amended Mr. Garcia’s charges from RCW 69.50.415, Controlled Substance Homicide to RCW 69.50.401(2)(b), Delivery of a Controlled Substance, to wit: Cocaine. Mr. Garcia plead guilty to the latter charge. Mr. Garcia argues that his delivery of cocaine to Mr. Froslic did not cause Mr. Froslic’s death. Brief of Appellant 10. The State does not agree. However, it does not develop the argument, because of the state of the record, the finding by the trial judge, and because Mr. Garcia expressly agreed to pay restitution on the homicide charge.²

² The State does not concede Mr. Garcia’s point because it does not wish to preclude Mr. Froslic’s family from pursuing a restitution claim under the Crime Victim’s Compensation Act, RCW 7.68.

(B) Mr. Garcia agreed to pay restitution on the original homicide charges in exchange for amended charges and a favorable plea agreement.

Under RCW 9.94A.753(5) a trial court may also impose restitution if the offender pleads guilty “to a lesser offense or fewer offenses and agrees with the prosecutor’s recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.” The agreement to pay restitution must be expressly made. *State v. Woods*, 90 Wn. App. 904 (1998). A trial court’s finding that an express agreement was made will be upheld unless there was an abuse of discretion. *Davison*, at 919. Discretion is abused if applied in “a manifestly unreasonable manner or on untenable grounds.” *State v. Dauenhauer*, 103 Wn. App. 373, 377-78 (2000) (citations omitted).

Here, the trial court did not abuse its discretion in finding an express agreement. One of the terms of the plea offer to amend from the Controlled Substance Homicide charge was to pay “any restitution.” Mr. Garcia received the benefit of pleading guilty to a reduced charge. Importantly, it was his own legal counsel that inserted the “to be determined” notation on to the plea form. Mr. Garcia was present with counsel at the sentencing hearing when the prosecution told the Court restitution was to be determined at a later date. The defense did not object; furthermore, these statements were made in the context of the

family discussing at length the effect of Mr. Froslic's death on their lives. Finally, Mr. Garcia acknowledged that he would be required to pay restitution by signing the Judgment and Sentence form. Thus, paying restitution in an amount to be determined was an explicit term of the agreement between the prosecutor and the defendant at the time when the State originally charged Mr. Garcia with Controlled Substances Homicide.

Mr. Garcia argues that no express agreement existed between himself and the State because there is no evidence to relate the agreement to pay with the homicide charge. In fact, the law is not in his favor. No express agreement exists where the State requests restitution from uncharged criminal activity. In *State v. Woods*, 90 Wn. App. 904 (1998), the court found no express agreement where the defendant plead guilty to possession of stolen property but did not agree to pay restitution for the uncharged crime of theft. Also, no express agreement exists where the State requests restitution for specific items but omitted those items from the list of losses contained on the plea of guilty. In *State v. Miszak*, 69 Wn. App. 426 (1993), the defendant plead guilty to stealing a single item of jewelry, but did not expressly agree to pay restitution for multiple items. So too, in *State v. Johnson*, 69 Wn. App. 189, 192 (1993), the defendant agreed to pay in full for the charged offense and a variety of stolen items were listed, but the prosecution requested restitution on items not charged in the Information. No agreement was found.

Here, unlike in *Woods*, the State is not requesting restitution from uncharged criminal activity. The State originally charged Mr. Garcia with a controlled substance homicide and any and all discussion of restitution between the prosecution and the State pertained to that charge. Also, unlike in *Miszak* and *Johnson*, the prosecution did purport to list the losses for which restitution would be forthcoming. If, like in *Miszak* and *Johnson*, the State had listed the items for which restitution would be required, Mr. Garcia might be able to argue that the funeral and counseling expenses were not listed, and that he did not agree to pay for them.

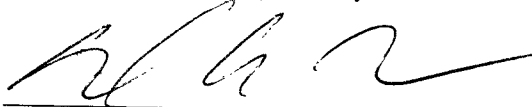
An express agreement existed between Mr. Garcia and the State that Mr. Garcia would pay restitution arising out of the homicide charge. The trial court had ample evidence from the plea offer, the record, the statement of defendant on plea of guilty, and the judgment and sentence to find that an express agreement existed. Unlike the cases finding no agreement, the State did not leave the controlled substances homicide crime uncharged, nor did it omit funeral and counseling expenses from a list of restitution items. Therefore, the trial court did not abuse its discretion in finding an express agreement.

E. CONCLUSION

Pursuant to RCW 9.94A.753(5), a trial court may impose restitution on an offender if “the offender is convicted of an offense which results in injury to any person or damage to or loss of property” or “if the

offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement." Here pre-trial negotiations, the statement of the defendant on plea of guilty, the judgment and sentence the context of the hearing and statements made on the record demonstrate Mr. Garcia and the State had an express agreement that Mr. Garcia would pay restitution on the original charge of controlled substance homicide. For those reasons the State respectfully request this Court affirm the decision of the Jefferson County Superior Court.

Respectfully submitted this 30th day of July, 2015.

A handwritten signature in black ink, appearing to read 'M. Haas', written over a horizontal line.

MICHAEL E. HAAS, WSBA #17663
Jefferson County Prosecuting Attorney

PROOF OF SERVICE

I, Janice N. Chadbourne, certify that on this date:


I filed the State's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system.

I delivered an electronic version of the brief, using the Court's filing portal, to:

John A. Hays
jahayslaw@comcast.net

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Port Townsend, Washington on July 30, 2015.


Janice N. Chadbourne
Lead Legal Assistant

JEFFERSON COUNTY PROSECUTOR

July 30, 2015 - 2:38 PM

Transmittal Letter

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